

Frequently Asked Questions about Order No. 2004 – Standards of Conduct for Transmission Providers

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Date: December 15, 2005

Commission staff has prepared the following list of frequently asked questions (FAQs) and answers concerning the Standards of Conduct for Transmission Providers, which are set forth in Part 358 of the Commission's regulations, 18 C.F.R. Part 358 (2005). The FAQs are a mix of basic questions regarding the Standards of Conduct and specific questions that staff has received from industry participants.

Staff opinions expressed in response to these FAQs are not binding on the Commission. Where staff offers an opinion on the interpretation of the regulations, it is meant only as helpful guidance and is not authoritative binding precedent. *See* 18 C.F.R. § 388.104(a). The FAQs may be expanded or supplemented as appropriate.

The responses to the FAQs are intended to provide general guidance only. Facts and circumstances relating to particular factual circumstances may differ, and staff notes that even slight variations might require different responses. For more detailed explanations, staff suggests reading the text of the Order No. 2004 series which created the current Standards of Conduct which can be found at <http://www.ferc.gov/legal/maj-ord-reg/land-ord.asp?new=sc3>.

The FAQs are organized into eight categories: (1) General; (2) Standards of Conduct audits; (3) Independent functioning and organizational structure requirements; (4) Information sharing prohibitions; (5) Training requirements; (6) Implementing tariff provisions; (7) Requesting waivers or exemptions from the Standards of Conduct; and (8) Posting requirements.

A. General Questions and Definitions

1. What are the Standards of Conduct?

Answer: The Commission issued the Standards of Conduct in Order No. 2004, which took effect on September 22, 2004. The Standards of Conduct govern the relationship between Transmission Providers and their Marketing and/or Energy Affiliates. They are designed to prevent Transmission Providers (generally FERC jurisdictional natural gas pipelines or electric public utilities) from giving undue discrimination or granting undue preferences in favor of their Marketing and/or Energy Affiliates. The Standards of

Conduct prohibit a Transmission Provider from operating its transmission system to benefit preferentially a Marketing or Energy Affiliate.

While there are many different requirements under the Standards of Conduct, the basic requirements are: (1) A Transmission Provider must function independently from its Marketing and Energy Affiliates; (2) A Transmission Provider must treat all transmission customers, affiliated and non-affiliated, on a non-discriminatory basis and may not operate its transmission system to preferentially benefit its Marketing or Energy Affiliates. See 18 C.F.R. § 358.2. The Standards of Conduct also require that a Transmission Provider ensure that employees of its Marketing and Energy Affiliates only have access to that information available to the Transmission Provider's transmission customers. 18 C.F.R. §358.5(1)(1). In addition, the Standards of Conduct require a Transmission Provider to post certain information on its public utility OASIS or natural gas pipeline Internet website. 18 C.F.R. §§ 358.4(a)(2),(b), (c) and (e); 18 C.F.R. 358.5(b)(3) and (4); 18 C.F.R. 358.5(c)(4); 18 C.F.R. and 358(d).

2. Why were the Standards of Conduct created?

Answer: The goal of the Standards of Conduct is to prevent undue discrimination. The Standards of Conduct also complement the Commission's efforts encouraging open access transmission service. Transmission Providers have economic incentives to give undue preferences towards their affiliates. In 1987, the Commission promulgated Standards of Conduct governing interstate natural gas pipelines (Order No. 497). At the time, the Commission had recently made interstate natural gas pipelines open access transporters for all shippers and wanted to ensure that the pipelines would not discriminate in favor of their marketing affiliates. The Commission issued another set of Standards of Conduct for the electric industry in 1996 (Order No. 889) to prevent non-discrimination during the restructuring of that industry.

The current Standards of Conduct (Order No. 2004) replaced the earlier separate Standards of Conduct for the gas and electric industries. The current Standards of Conduct not only apply both to gas and electric Transmission Providers, but expand the coverage to their affiliates and activities covered by the requirements of the rule to recognize that today's energy markets provide many types of opportunities for discrimination that were not covered by the earlier versions of the Standards of Conduct. The requirement that a Transmission Provider function independent from its Marketing and Energy Affiliates is vital if the Commission is to ensure that a Transmission Provider does not use its access to information about transmission to unfairly benefit its own or affiliates' sales to the detriment of competitive markets. The Commission determined that sharing of information between Transmission Providers and Marketing or Energy Affiliates undermines and frustrates the efforts of "independent" businesses to buy, sell, build, grow and provide competitive alternatives in markets where there are concerns about market power.

3. People often interchangeably use the terms Standards of Conduct and Codes of Conduct, can you explain the difference?

Answer: The Standards of Conduct govern the relationships between a Transmission Provider and its Marketing and/or Energy Affiliates. The purpose of the Standards of Conduct is to prevent undue discrimination and undue preferences in the provision of interstate transmission services.

The Codes of Conduct govern the relationship between the utility with market-based rates (traditional electric utility, generator or power marketer) and its affiliate(s) (traditional electric utility, generator or power marketer.) The Codes of Conduct guard against discrimination by public utilities in favor of power marketers or other affiliates that request market-based rate authority. The purpose of the Codes of Conduct is to protect captive ratepayers of the investor-owned public utilities. The Commission has not codified the Codes of Conduct, but imposed them on a case-by-case basis as a condition of granting market-based rate authority. [Click here for a link to more details on the Codes of Conduct.](#)

4. What types of “Transmission Providers” are covered by the Standards of Conduct?

Answer: The Standards of Conduct define a “Transmission Provider” as (a) any public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce (i.e., subject to the Federal Power Act) or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A of part 157 or subparts B or G of part 284 (i.e., subject to the Natural Gas Act). See 18 C.F.R. §§ 358.3(a)(1) and (2).

A Transmission Provider does not include a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, no exclusive franchise area, no captive ratepayers and no market power. 18 C.F.R. § 358.3(a)(3).

A Transmission Provider also does not include a Commission-approved Regional Transmission Organization (RTO) or Independent System Operator (ISO) but does include Transmission Providers that are members of RTOs or ISOs.

5. Why are RTOs and ISOs exempt from the Standards of Conduct, but Transmission Providers that are members of an RTO or ISO are not exempt from the Standards of Conduct?

Answer: If an RTO or ISO is Commission-approved, the Commission has adopted

measures to ensure the independence of the RTO or ISO. As an independent entity, an RTO or ISO does not have economic incentives to favor its affiliates. Therefore, as stated in Section 358.1 of the Commission's regulations, an RTO and ISO, as an entity, is not subject to the Standards of Conduct. 18 C.F.R. §358.1(c).

A Transmission Provider that is a member of an RTO or ISO remains subject to the Standards of Conduct because the Transmission Provider may retain some control over its transmission facilities and/or access to non-public transmission, customer or market information. If so, the Transmission Provider would still have the ability to provide undue preferences to its Energy and Marketing Affiliates. For example, if a Transmission Provider submits non-public information to the RTO in order for the RTO to calculate available transmission capability, the Transmission Provider could provide its Energy Affiliate with an undue preference by revealing that information to the Energy Affiliate. In addition, the individual Transmission Providers are responsible for ensuring compliance with the posting requirements of the Standards of Conduct even if the RTO or ISO is the OASIS provider.

If a Transmission Provider that participates in a Commission-approved RTO or ISO does not operate or control its transmission facilities and has no access to non-public transmission, customer or market information, the regulations specifically permit the Transmission Provider to seek a Standards of Conduct exemption from the Commission. 18 C.F.R. § 358.1(c). The Commission granted such an exemption to Old Dominion Electric Cooperative. *See American Transmission Co. LLC, et al.*, 109 FERC ¶ 61,082 at P 34-38 (2004).

6. What is an Energy Affiliate?

Answer: 18 C.F.R. §§ 358.3(d) (1-4) defines an Energy Affiliate as an affiliate of a Transmission Provider that:

- (1) Engages in or is involved in transmission transactions in U.S. energy or transmission markets; or
- (2) Manages or controls transmission capacity of a Transmission Provider in U.S. energy or transmission markets; or
- (3) Buys, sells, trades or administers natural gas or electric energy in U.S. energy or transmission markets; or
- (4) Engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets.
- (5) An LDC division of an electric public utility Transmission provider shall be

considered the functional equivalent of an Energy Affiliate, unless it qualifies for the exemption in § 358.3(d)(6)(v).

On the other hand, pursuant to 18 C.F.R. § 358.3(d)(6) an Energy Affiliate does **not** include:

- (i) a foreign affiliate that does not participate in U.S. energy markets;
- (ii) an affiliated Transmission Provider or an interconnected foreign affiliated natural gas pipeline that is engaged in natural gas transmission activities which are regulated by the state, provincial or national regulatory boards of the foreign country in which such facilities are located;
- (iii) a holding, parent or service company that does not engage in energy or natural gas commodity markets or is not involved in transmission transactions in U.S. energy markets;
- (iv) an affiliate that purchases natural gas or energy **solely** for its own consumption (**not** for the subsequent generation of electricity);
- (v) a state regulated local distribution company that acquires interstate transmission capacity to purchase and resell gas only for on-system sales and only engages in Energy Affiliate activities to the limited extent necessary to support on-system sales and to engage in *de minimus* sales necessary to remaining in balance under applicable pipeline tariff requirements;
- (vi) a processor, gatherer, Hinshaw pipeline or an intrastate pipeline that makes incidental purchases or sales of *de minimus* volumes of natural gas to remain in balance under applicable pipeline tariff requirements and otherwise does not engage in Energy Affiliate activities.

7. What is a Marketing Affiliate?

Answer: A Marketing Affiliate includes an interstate natural gas pipeline's sales operating unit and a public utility Transmission Provider's energy sales unit unless the unit engages solely in bundled retail sales. 18 C.F.R. § 358.3(e).

8. Are most Marketing Affiliates also Energy Affiliates? Is there a distinction?

Answer: Yes. All Marketing Affiliates are also Energy Affiliates, but not all Energy

Affiliates are Marketing Affiliates. With respect to the Standards of Conduct, Marketing and Energy Affiliates are treated the same vis-à-vis their relationships with the affiliated Transmission Providers.

9. May the Commission impose civil penalties for violations of the Standards of Conduct are violated?

Answer: Yes. The Commission may impose civil penalties for violations of the Standards of Conduct. In the Energy Policy Act of 2005 (EPAcT 2005), Congress recently granted the Commission enhanced authority to assess civil penalties for violations of the Federal Power Act, Natural Gas Act and Natural Gas Policy Act of 1978 that occur after August 8, 2005.¹

On October 20, 2005, the Commission issued a [Policy Statement on Enforcement](#) [hyperlink to document] to provide guidance and regulatory certainty regarding enforcement of the statutes, orders, rules, and regulations the Commission administers. The Policy Statement discusses the factors the Commission will take into account in determining remedies for violations, including applying the enhanced civil penalty authority provided by EPAcT 2005. The Commission will provide firm but fair enforcement of our rules and regulations and will place entities subject to the Commission's jurisdiction on notice of the consequences of violating the statutes, orders, rules, and regulations the Commission enforces.

In discussing these factors, the Commission will take into account in determining the severity of penalties, if any, to be imposed for violations, we also recognize the importance of demonstrable compliance and cooperation efforts by utilities, natural gas companies, and other entities subject to the statutes, orders, rules, and regulations administered by the Commission. We encourage all entities to implement comprehensive compliance programs, to develop a culture of compliance within their organizations, and to self-report and cooperate with the Commission in the event violations occur.

B. Questions Regarding Standards of Conduct Audits

10. How does OMOI ensure consistency in its Standard of Conduct audits? Do audit staff use standardized audit programs or checklists?

Answer: OMOI audits are conducted in accordance with generally accepted government auditing standards.² OMOI staff uses an audit program for the Standards of Conduct

¹ P. L. No. 109-58, 119 Stat. 594 (2005).

² Government Auditing Standards (2003 Revision) (Comptroller General of the United States, United States General Accounting Office 2003).

audits. The audit program is tailored to the specific circumstances of each company that is being audited (e.g., depending on the types of affiliates it has, whether the affiliates are located in the same building and the scope of the audit).

Generally, in a Standards of Conduct Audit, after conducting some preliminary research, the staff issues a commencement letter that includes a series of data requests. Most audits focus on determining whether the Transmission Provider has complied with the key principles of the Standards of Conduct: the independent functioning requirement, information sharing prohibitions and non-discriminatory tariff provisions. [Click here to link to a document that describes the Audit Process.](#)

In addition, audit staff are trained by agency experts to ensure a thorough understanding of the Standards of Conduct. Audit staff also review previous audit reports. All audit findings are reviewed by an audit manager and OMOI senior staff. In addition, any finding involving new or unique issues are also reviewed by staff from the Commission's Office of Markets, Tariffs and Rates and Office of the General Counsel to ensure consistency.

11. In an audit report relating to a specific Transmission Provider where that Transmission Provider agrees to take certain compliance measures, must all Transmission Providers follow the same compliance measures?

Answer: No. Absent a statement by the Commission to the contrary, an uncontested audit report is binding only on the Transmission Provider that is the subject of the audit report. However, audit reports and the order approving them provide guidance as to what the Commission and Commission Staff consider to be appropriate and inappropriate activities under the Standards of Conduct and appropriate practices under the particular circumstances to promote compliance and prevent violations.

There are may be many ways for a Transmission Provider to ensure compliance with the Standards of Conduct and the audit report's recommendations that relate to the specific circumstances and findings for that company. Unless the Standards of Conduct regulations or the Commission's orders specifically require a Transmission Provider to take a specific compliance action, compliance measures in an audit report only reflect what staff and the Transmission Provider have agreed are appropriate for that Transmission Provider's operations.

12. During the January 19, 2005 Commission meeting, OMOI announced that it had conducted a survey of Transmission Providers' compliance with the Standards of Conduct posting requirements. What were the results of this survey?

Answer: During the last quarter of 2004, OMOI staff conducted a compliance survey of the websites or OASIS sites of 190 Transmission Providers (95 electric and 95 gas). The

focus was to determine if the Transmission Providers were posting the information required under the Standards of Conduct or had a link to postings of required information (*e.g.*, employee transfers). Staff did not verify whether information posted on the websites or OASIS was accurate, just whether the information had been posted.

In its initial survey, OMOI staff found that 58 Transmission Providers (31%) posted all the required elements, but that most (132 or 69 %) had not posted all the required information. Staff worked with the Transmission Providers to bring them into compliance. No penalties or other remedies were sought as the focus of the effort was compliance not enforcement.

In instances in which a Transmission Provider failed to post certain information or a link to that information, OMOI staff notified the Transmission Provider's Chief Compliance Officer of the omission and recommended changes to bring the company into compliance. Following an agreed-upon deadline, staff re-accessed the Transmission Provider's website to verify the changes.

C. Questions Regarding the Independent Functioning Requirement and Permissible Organizational Structure

13. What is the Independent Functioning Requirement?

Answer: The Independent Functioning Requirement of the Standards of Conduct, 18 C.F.R. § 358.4(a), requires that except in emergency circumstances affecting system reliability, the transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees.

Specifically, the Transmission Provider is prohibited from permitting the employees of its Marketing or Energy Affiliates from conducting transmission system operations or reliability functions, and from having access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other transmission customers. 18 C.F.R. § 358.4 (a)(3).

The purpose of the Independent Functioning Rule is to prevent the Energy and Marketing Affiliates of a Transmission Provider from gaining a competitive advantage over non-affiliated customers or potential customers of the Transmission Provider. If the Transmission Provider and its Energy and Marketing Affiliates did not function independently from one another, the Energy and Marketing Affiliates would have access to information that non-affiliates did not have and thus would make it more difficult for non-affiliates to compete for the services of the Transmission Provider.

14. What constitutes “emergency circumstances affecting system reliability” that would allow an exception to the Independent Functioning Requirement?

Answer: The Commission has not defined what constitutes “emergency circumstances affecting system reliability” to allow flexibility to Transmission Providers in this area. Examples of emergency circumstances affecting system reliability that the Commission has previously recognized include the Blackout of 2003 and severe hurricanes (such as those in August of 2004 and August, September and October of 2005).

Transmission Providers must report to the Commission and post on the OASIS (for electric Transmission Providers) or on the Internet website (for gas Transmission Providers), each emergency that resulted in any deviation from the Standards of Conduct, within 24 hours of such deviation. 18 C.F.R. § 358.4(a)(2). This requirement ensures transparency for non-affiliated customers and alerts the Commission to the event. The report to the Commission may be faxed or electronically submitted to the Commission in an EY docket.

15. Aside from the “emergency circumstances” exception, are there other exceptions to the Independent Functioning Requirement?

Answer: Yes.

- Transmission Providers are permitted to share support employees and field and maintenance employees with their Marketing and Energy Affiliates. 18 C.F.R. § 358.4(a)(4). Examples of shared support employees covered by this exception (provided they do not otherwise engage in transmission related functions) are: Information Technology, travel managers, clerical staff, human resources staff, maintenance staff, staff involved with accounting or billing functions, and legal staff.
- Transmission Providers are permitted to share with their Marketing or Energy Affiliates senior officers and directors who do not conduct transmission system operations or reliability functions. Transmission function employees include, but are not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing, and carrying out transmission related operations. 18 C.F.R. § 358.4(a)(5).
- Transmission Providers are permitted to share risk management employees that are not engaged in Transmission Functions or sales or commodity functions with their Marketing and Energy Affiliates. 18 C.F.R. § 358.4(a)(6).

16. Do the Standards of Conduct place any limitation on the duties of shared

support employees?

Answer: Yes, section 358.4(a)(4) allows Transmission Providers to share support employees and field and maintenance employees with their Marketing and Energy Affiliates. The purpose of this exception is to permit the sharing of administrative support-type employees, not the sharing of employees who are engaged in transmission activities.

Importantly, a Transmission Provider may categorize certain employees in a shared service or shared support role, the Commission will determine whether employees perform a transmission function based on their functions and duties, not their job titles. For example, in *Alcoa Power Generating, Inc., et al.*, 108 FERC ¶ 61,243 at P 169-70 (2004), the Commission determined that employees in the rate design department of Pennsylvania Power and Light Company were, in fact, Transmission Function employees because they provided rate design support for transmission rate filings. If employees are engaged in transmission function activities, they cannot be shared with Marketing or Energy Affiliates, unless the Transmission Provider has a waiver from the Commission.

17. How can a Transmission Provider share field and maintenance employees with its Marketing and Energy Affiliates if Marketing and Energy Affiliate employees may not have preferential access to transmission facilities?

Answer: Order No. 2004 allows Transmission Providers to share field and maintenance employees with their Marketing and/or Energy Affiliates. These shared field and maintenance employees must be able to access the transmission facilities at which they are providing the shared services. In determining whether the sharing and access is appropriate, the Commission looks at what these shared employees do –*e.g.*, they must truly be field or maintenance employees who do not have access to customer and market information and no decision making functions.

18. What are the permissible duties of service company employees under the Standards of Conduct?

Answer: Assuming that the service company does not participate in activities that would make it an Energy Affiliate, service company employees may provide any administrative services to its affiliated Transmission Provider and the affiliated Transmission Provider's Energy and Marketing Affiliates, but must abide by the information sharing prohibitions such as the no-conduit rule.³ If the service company employees are providing services to or are assigned, dedicated or working on behalf of the Transmission Provider or Marketing or Energy Affiliate; the employees must observe the Standards of Conduct as

³ See FAQ No. 26 for an explanation of the No-Conduit Rule.

if they were directly employed by the respective companies/divisions. *See* Order No. 2004-A at P 107-115.

19. Order No. 2004 requires physical separation between the Transmission Provider and the Marketing/Energy Affiliate but does not state specific requirements on how to do so. However, a number of the Commission's audit reports require cardkey access to both functions and seem to convey that reliance on regular door locks, signs and training is not sufficient. Is cardkey security a requirement for all Transmission Providers?

Answer: No. The Standards of Conduct do not expressly require cardkey access to separate the Transmission Provider from its Marketing and/or Energy Affiliates. However, this has been an appropriate practice recommended by staff and accepted in Commission orders, including orders under the prior Standards of Conduct, to comply with the information non-disclosure and functional separation requirements.

In addition to cardkey access, there are other methods that may be acceptable to help ensure compliance, such as informational signs and providing sign-in sheets for visitors entering Transmission Function areas. While conducting a Standards of Conduct audit to determine the adequacy of measures a Transmission Provider has taken to promote compliance with the independent functioning and information non-disclosure requirements, staff will consider how physically close the Transmission Provider is to its Marketing and/or Energy Affiliates. For example, stricter security measures will be expected in situations where the Transmission Provider and its Marketing and/or Energy Affiliate share the same building. On the other hand, if the Marketing/Energy Affiliates are located in a different city or state than the Transmission Provider, a lesser degree of physical security may be acceptable.

20. Should employees of the Transmission Provider that administer tariff provisions be designated as Transmission Function employees?

Answer: Yes. Activities such as designing rates, administering tariffs (which establish rates for service as well as the terms and conditions of service for the transmission of electricity or transportation of natural gas, including operating conditions), and calculating gas cost adjustment charges are transmission functions that involve the planning and carrying out of transmission-related operations. *See Alcoa Power Generating Inc. et al.*, 108 FERC ¶ 61,243 at P 169 (2004) (discussion of PPL Electric Utilities Corp).

21. If an electric distribution company owns generation within its service territory, how should management of the generator be classified under the Standards of Conduct (i.e., as part of the Transmission Function, Energy or Marketing Affiliate, or neither)?

Answer: The electric distribution company is an Energy Affiliate. Order No. 2004 provides no exemption for electric distribution divisions or companies. The management of the generator is part of the electric distribution division and should be treated as an Energy Affiliate, and thus should not share employees.

22. May an electric distribution division or company that performs only distribution wires functions be shared with the division of the Transmission Provider that performs similar functions?

Answer: In Order No. 2004-C at P 24 and Order No. 2004-B at P 78, the Commission stated that such sharing is permitted if the employees perform only distribution wires functions (*e.g.*, wires-to-wires functions.) However, the Commission added that if the distribution function engages in retail sales functions, the retail sales function employees cannot engage in any wholesale sales of power, such as selling any excess generation to a non-retail customer without triggering Energy Affiliate status. It is not appropriate for an entity that participates in the wholesale market to obtain an undue preference when competing with non-affiliates for transmission capacity.

23. Is the gas procurement function of a electric utility Transmission Provider an Energy Affiliate? Does it make a difference if the gas procurement function only buys gas for generation of electricity for retail consumption or if the gas procurement function buys natural gas for generation of electricity for retail consumption and sells natural gas to hedge against price volatility?

Answer: If the gas procurement function of a Transmission Provider purchases natural gas for the subsequent generation of electricity it is considered to be an Energy Affiliate. *See* 18 C.F.R. § 358.3(d)(6)(iv).

24. Suppose a Transmission Provider, the electric distribution division and the Marketing Affiliate are all involved in negotiations concerning a generator under construction in the Transmission Provider's service territory. Once complete, the generator will become the property of the electric distribution division. How should such a generator be classified when it is acquired by the electric distribution division or function?

Answer: If the output of the generator is only going to retail customers, then it is not a Marketing or Energy Affiliate for purposes of the Standards of Conduct. However, if some of the generator's output is being sold in the wholesale market, then the generator should be classified as a Marketing and/or Energy Affiliate.

D. Questions regarding information sharing prohibitions

25. What are the information sharing prohibitions in the Standards of Conduct?

Answer: The Standards of Conduct require that a Transmission Provider must ensure that employees of its Marketing and Energy Affiliates have access only to information available to the Transmission Provider's transmission customers (*i.e.*, the information posted on the OASIS for an electric Transmission Provider or Internet website for a gas Transmission Provider), and must not have access to any information about the Transmission Provider's transmission system that is not available to all users of an OASIS (for electric) or Internet website (for gas). 18 C.F.R. § 358.5(a)(1).

The prohibition covers information on the Transmission Provider's transmission system including, but not limited to, information about available transmission capability, price, curtailments, storage, ancillary services, balancing, maintenance activity, capacity expansion plans or similar information. 18 C.F.R. § 358.5(a)(2).

Additionally, employees of a Transmission Provider may not disclose to a Marketing or Energy Affiliates any information concerning the transmission system of the Transmission Provider or the transmission system of another through non-public communications conducted off the OASIS (electric) or Internet website (gas), or through access to unposted information that is not contemporaneously available to the public, or through information on the OASIS or Internet website that is not at the same time publicly available. 18 C.F.R. § 358.5(b)(1). If an improper disclosure is made, the Transmission Provider must immediately post the information on the OASIS (electric) or Internet website (gas). 18 C.F.R. § 358.5(b)(3).

Also, a Transmission Provider may not share any information acquired from nonaffiliated transmission customers or potential nonaffiliated transmission customers, or developed in the course of responding to requests for transmission or ancillary service on the OASIS (electric) or Internet website (gas), with employees of its Marketing or Energy Affiliates, except to the limited extent information is required to be posted on the OASIS or Internet website in response to a request for transmission service or ancillary services. 18 C.F.R. § 358.5(b)(2). If an improper disclosure is made, the Transmission Provider must immediately post the information on the OASIS (electric) or Internet website (gas). 18 C.F.R. § 358.5(b)(3).

26. What is the “no-conduit rule”?

Answer: The “no-conduit rule” prohibits the Transmission Provider or employee of a Transmission Provider from using anyone to pass along (*i.e.*, be a conduit for revealing) the non-public transmission or customer information to an Energy Affiliate or Marketing Affiliate. 18 C.F.R. § 358.5(b)(7). Employees who are permitted to be shared by a Transmission Provider and Marketing or Energy Affiliate (for example, accountants) may have access to non-public transmission or customer information, as long as such

employees do not act as conduits to share such information with any Marketing or Energy Affiliates.

While the no-conduit rule applies to everyone, including shared support and maintenance personnel, it was primarily created to allow shared officers and directors to view and access non-public transmission and customer related information without triggering a posting requirement. In Order No. 2004 *et seq.*, the Commission recognized that officers and directors of entities that have both Transmission Functions and Energy Affiliate Functions need to have information from both functions to carry out their fiduciary duties to the entity and its shareholders. The Commission also understood that shared officers and directors could carry out their fiduciary duties without improperly disclosing non-public transmission or customer information to the Marketing and/or Energy Affiliates if the shared officers and directors do not engage in the day-to-day planning, directing, organizing or carrying out transmission system operations or Energy Affiliate Functions. 18 C.F.R. § 358.4(a)(5). However, while shared officers and directors may receive the transmission or customer information, they may not reveal the information (*i.e.*, be a conduit) to the Marketing or Energy Affiliates.

Shared support and maintenance personnel (*e.g.*, clerical staff, human resources personnel, field engineers, accountants, lawyers) must observe the no-conduit rule. All contractors, consultants and agents of the Transmission Provider must observe the no-conduit rule.

27. What information is acceptable for a shared officer or director to receive from the Transmission Provider?

Answer: As discussed in the last FAQ, shared officers and directors who do not carry out Transmission Functions or Energy Affiliate Functions may receive all types of information so long as they observe the no-conduit rule by not disclosing the information to the Energy and Marketing affiliates. On a case-by-base basis and in limited circumstances, the Commission has granted partial waivers of the information sharing prohibitions and the independent functioning requirement to permit the sharing of officers and directors who are engaged in the day-to-day duties of planning, directing, organizing or carrying out Transmission Functions and/or Energy Affiliate for small Transmission Providers.

28. Are joint meetings between Transmission Provider employees and Marketing and Energy Affiliate employees permitted under the Standards of Conduct?

Answer: Yes. Joint meetings between Transmission Provider Employees and Marketing and/or Energy Affiliate Employees are allowed so long as: (1) the Transmission Function Employees do not disclose to the Marketing and/or Energy Affiliate Employees any non-public information about the transmission system or customer information; (2) meetings

do not convey an undue preference to the Marketing and/or Energy Affiliates; and (3) the subject of meetings is a topic that is specifically allowed for a shared discussion (such as specific transaction discussions). A Transmission Provider may also meet with its Marketing and/or Energy Affiliate if the purpose of the meeting is to discuss the Marketing and/or Energy Affiliate's specific transmission request.

Although joint daily meetings between a Transmission Provider and Marketing or Energy Affiliates to address the dispatch of affiliated generation units are not prohibited by the Standards of Conduct, the Commission has previously expressed concern that the frequency of these meetings could create an off-OASIS institutional track that could be used to subvert the restrictions on affiliate and wholesale merchant preferences. *See Ameren Services Company*, 87 FERC ¶ 61,145 at 61,599 (1999) (discussing Duke Power Company). For example, if daily meetings take place between a Transmission Provider and an Energy Affiliate to deal with the dispatch of affiliated generation units, the Transmission Provider must ensure that non-public information about the transmission system or customer information is not discussed and no undue preference is given.

In one case involving the Order No. 497 Standards of Conduct, the Commission ruled that the fact that a Transmission Provider silently attended daily meetings of its Marketing Affiliate during which the Marketing Affiliate developed its trading plans for the day violated the independent functioning requirement because it provided a level of access not available to all shippers and increased the opportunity and ability of the Transmission Provider to unduly discriminate in favor of its Marketing Affiliate. *Amoco Production Company v. Natural Gas Pipeline Company of America*, 82 FERC ¶ 61,038 at 61,157 (1998), *order on reh'g*, 82 FERC ¶ 61,300 at 62,192 (1998), *reh'g granted in part*, 83 FERC ¶ 61,197 (1999).

As a result, to determine if the joint meetings are appropriate, during a Standards of Conduct audit staff may ask questions concerning the frequency of the joint meetings, the subject areas discussed, whether only personnel necessary for the discussion of the subject areas are present and the types of information shared.

There are certain best practices, although not required by Order No. 2004, that can help a Transmission Provider ensure that joint meetings do not result in the disclosure of prohibited non-public information or provide an undue preference. The Chief Compliance Officer or his or her designee could attend the joint meetings to prevent impermissible information from being discussed. Another alternative is to keep minutes of the joint meetings. While these are not required measures, they can have two positive results: (1) it reinforces the need to comply with the Standards of Conduct's information sharing prohibitions; and (2) gives the Transmission Provider the ability to document its compliance with the information sharing prohibitions in the event of an audit, investigation or complaint.

29. Is a Transmission Provider permitted to reveal transmission information to its Energy or Marketing Affiliate if there are also non-affiliated customers present?

Answer: Generally speaking, this is only permissible if the disclosure is made to all customers and all potential customers, not only to some of them. However, there are some situations in which the disclosure may occur without violating the Standards of Conduct even if not all non-affiliated customers or potential customers are present. The following hypotheticals, based on situations suggested by industry participants provide some illustrative examples:

Hypothetical 1: A Transmission Provider invites all customers and potential customers, including its Energy Affiliate customers, to a customer meeting. The Transmission Provider intends to discuss its future transmission plans, including some matters that the Transmission Provider does not want to be made public at this time, in part because it wants its customers' input before it finalizes certain of these plans. Can the Energy Affiliate attend without the Transmission Provider having to post information regarding these future transmission plans?

Answer: Yes, if the Transmission Provider has invited all customers and potential customers, giving them an equal and timely opportunity to participate, the Energy Affiliate's attendance would be permissible.

Hypothetical 2: Similar circumstances as described in Hypothetical 1, but the Transmission Provider will be handing out documents at the meeting. The Transmission Provider does not want to post the document on its website, possibly because the document contains critical energy infrastructure information. The Energy Affiliate, like all other customers, was invited to the meeting, but chooses not to attend. May the Energy Affiliate ask for and receive a copy of the hand-out or other material distributed at the meeting?

Answer: Yes. In order to prevent the appearance of an undue preference, the Transmission Provider should state in its announcement or invitation for the meeting that any customer or potential customer who chooses not to attend may receive the hand-out or other material upon request. This ensures that all customers and potential customers are aware that they have equal access to the information.

Hypothetical 3: A Transmission Provider plans to invite some, but not all, of its customers and potential customers to a customer meeting. The reason for this is that the Transmission Provider has concluded that only certain customers would have an interest in the subject of the meeting (for example, the meeting will discuss maintenance plans and schedules in a discrete area of the Transmission Provider's system). The Energy Affiliate is one of the customers that would have an interest in the subject of the meeting. May the Energy Affiliate attend without the

Transmission Provider having to post the disclosed information?

Answer: No. The Energy Affiliate may not attend because there is a concern that the Transmission Provider might be providing preferential information to a class or select group of customers. It is impossible for a Transmission Provider to assess which entity might have interest in the market versus all transmission customers. Because of the national nature of many markets, the audience may be wider than a Transmission Provider assumes. If the Transmission Provider wants the Energy Affiliate to attend, the Transmission Provider must invite all customers and potential customers by posting a notice on its website and let the customers make the decision as to whether the issues are relevant to them.

Hypothetical 4: Same hypothetical situation as the last question, but the meeting is to discuss a rate filing that the Transmission Provider plans to file.

Answer: This would only be acceptable if the Transmission Provider posted on its website a notice of the customer meeting. Future rate plans are considered transmission information. Thus, there is a concern that the Transmission Provider might provide preferential transmission information to a select group of customers.

30. May a Transmission Provider disclose a non-affiliated customer's information to its Marketing and/or Energy Affiliate if the Energy or Marketing Affiliate is acting as an agent for that customer?

Answer: Yes. If the customer voluntarily consents to the disclosure in writing, such as through an agency agreement, the non-affiliated customer's information may be shared with a Marketing and/or Energy Affiliate. However, the Transmission Provider must post a notice on the OASIS (if an electric Transmission Provider) or internet website (if a gas Transmission Provider) of that consent along with a statement that the Transmission Provider did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent. *See* 18 C.F.R. § 358.5(b)(4).

If the agency agreement is terminated, the Transmission Provider may no longer share information and must immediately revise its information technology system or passwords or access rights profile to ensure that the former agent's access to the non-affiliated customer's information is terminated.

31. Are there any exceptions to the rule against the disclosure by a Transmission Provider to its Energy and Marketing Affiliates of any information concerning the transmission system of the Transmission Provider or the transmission system or the transmission system of another?

Answer: Yes. There are three such exceptions. A Transmission Provider may share

generation information necessary to perform generation dispatch with its Marketing and Energy Affiliate that does not include specific information about individual third-party transmission transactions or potential transmission arrangements. 18 C.F.R. § 358.5(b)(6).

Second, a Transmission Provider is permitted to share with its Energy Affiliates information necessary to maintain the operations of the transmission system. 18 C.F.R. § 358.5(b)(8). The Commission has defined this as information necessary to operate and maintain the transmission system on a day-to-day basis, but does not include transmission or marketing information that would give a Transmission Provider's Marketing or Energy Affiliate undue preference over a Transmission Provider's nonaffiliated customers in the energy marketplace. For example, in a natural gas pipeline context, information that may be shared under this exception includes confirmations, nominations and schedules with upstream producers and gathering facilities, operational data relating to interconnection points, and communications relating to maintenance of interconnected facilities. *See* Order No. 2004-A at P 203; Order No. 2004-B at P 114.

Finally, a Transmission Provider is not required to contemporaneously disclose to all transmission customers or potential transmission customers information that relates solely to a Marketing or Energy Affiliate's specific request for transmission service. 18 C.F.R. § 358.5(b)(5) (transaction-specific exception). However, this exception does not apply if in doing so the Transmission Provider reveals information about its transmission system or the transmission system of another that is not publicly available (see next question).

32. What is the extent of the information that can be revealed to an Energy or Marketing Affiliate under the transaction-specific exception in 18 C.F.R. § 358.5(b)(5)?

Answer: The Transmission Provider must treat all customers equally. If the Energy or Marketing Affiliate asks a question regarding the status of a transaction or a request, the answer should be limited to that request. If the Transmission Provider answers with additional information that could be relevant to other shippers, the more general information should be posted. The transaction-specific exemption is not a means to circumvent the rules. In Order No. 497-A (discussing the former gas Standards of Conduct), the Commission was specific in articulating that if a Transmission Provider included any general information in response to a request about a specific transaction, the general information must be contemporaneously disclosed to all shippers and potential shippers by posting that information. Order No. 497-A, FERC Stats. & Regs. Regulations Preambles 1986-1990 ¶ 30,868 at 31,597 (1989). The following three examples are illustrative:

Example A: Energy Affiliate calls its affiliated natural gas Transmission Provider to ask

if it can ship under an interruptible transportation contract to the XYZ delivery point tomorrow. Transmission Provider says no. This is a transaction-specific response allowed by the Standards of Conduct.

Example B: Energy Affiliate calls its affiliated natural gas Transmission Provider to ask if it can ship gas to the XYZ delivery point. Transmission provider responds, “no because all interruptible gas shipments to XYZ will likely be interrupted tomorrow.” This is the type of response that includes general information about the system that goes beyond the scope of the transaction-specific request. Unless the Transmission Provider has previously disclosed on its internet site that all interruptible gas shipments to XYZ will likely be interrupted tomorrow, it must make such a posting before the disclosure of that information to its Energy Affiliate because the information provided is general non-public information about the transmission system.

Example C: Energy Affiliate calls affiliated electric Transmission Provider to ask why its 500 MW/day from source XYZ to sink YZA was curtailed. Transmission Provider says “our EastWest line tripped, but it will be repaired by tomorrow.” Unless the Transmission Provider has previously disclosed this general information on the OASIS, it must do so before the disclosure of the information to the Energy Affiliate because the information provided is general, non-public information about the transmission system.

33. Is it permissible for a Transmission Provider share historical transmission data with a Marketing and/or Energy Affiliate without publicly posting that information?

Answer: No. Transmission information is much broader than real-time information. Application of the information sharing prohibition is not based on whether the information is historical or not. Transmission information will always be subject to the non-disclosure prohibitions, regardless of its age.

34. In addition to the requirement to post inappropriate disclosures of information to the Energy or Marketing Affiliate, 18 C.F.R. § 358.5(b)(3), does Order No. 2004 require that a Transmission Provider report the inappropriate disclosure to the Commission?

Answer: No. Under Order No. 2004, there is no separate filing requirement to report inappropriate disclosures of transmission information to the Commission.

35. May Transmission Provider employees and Marketing and/or Energy Affiliate employees jointly draft comments on a Notice of Proposed Rulemaking (NOPR) if the NOPR raises both transmission and generation issues?

Answer: Not if non-public transmission or customer information will be disclosed to the

Marketing and/or Energy Affiliate employees during the joint efforts. However, if the joint comments involve general policy positions and no transmission or customer information will be discussed, the Transmission Provider, Marketing Affiliate and Energy Affiliate may jointly prepare the comments.

If the Transmission Provider would have to consider, evaluate or discuss non-public transmission information or customer information with the Marketing or Energy Affiliate in the course of preparing the joint comments, or as part of the strategy being considered, the Transmission Provider should file separate comments. It is permissible for shared senior officers and management to review the comments or joint filing as long as they observe the no-conduit rule.

36. If a Marketing or Energy Affiliate has a purchase power agreement with a non-affiliated customer for which the Transmission Provider has conducted an interconnection study, may the Transmission Provider share with its Marketing or Energy Affiliate non-public information relating to the interconnection study and eventual interconnection agreement?

Answer: No. The Transmission Provider may only disclose customer information if the non-affiliated customer voluntarily consents in writing to the disclosure of its own information. 18 C.F.R. § 358.5(b)(4). The Transmission Provider may not share general, non-public information about the transmission system with its Marketing Affiliate whether or not the non-affiliated customer consents. The voluntary consent exception only applies to the disclosure of the customer's own information. Also, according to the Commission's Interconnection Rules under Order No. 2003, the non-affiliate for whom the transmission study was done cannot be a conduit for sharing the Transmission Provider's information with the Marketing Affiliate. The interconnection studies themselves are generally posted publicly on the OASIS.

E. Questions on the Training Requirements of the Standards of Conduct

37. What are the training requirements of the Standards of Conduct?

Answer: The Standards of Conduct require that Transmission Providers train officers and directors as well as employees with access to transmission information or information concerning gas or electric purchases, sales or marketing functions. 18 C.F.R. § 358.4(e)(5). The Transmission Provider must require each such employee to sign a document or certify electronically that the employee has participated in the training. 18 C.F.R. § 358.4(e)(5). The purpose of the training requirement is to ensure that improper disclosures of information to Energy and Marketing Affiliates do not occur.

38. When must training occur for new employees, officers or directors?

Answer: The Standards of Conduct do not include a timetable for training new employees, officers or directors, so the timing of the training is at the discretion of the Transmission Provider. However, as soon as an employee or officer or director has access to transmission or customer information, he or she must observe the Standards of Conduct. The failure to train employees will not excuse violations of the information sharing prohibitions. Therefore, it is in the best interest of the Transmission Provider to train new employees as soon as possible. Some Transmission Providers have chosen to provide introductory training material in their new employee orientation packages or with new employee paperwork and follow it up with more detailed Standards of Conduct training in person or via computer.

39. Do the Standards of Conduct mandate certain training programs or methodologies? May the training be done electronically or does it have to be done in person?

Answer: The Standards of Conduct do not prescribe or prohibit specific training programs or methodologies. These are at the discretion of the Transmission Provider. As a result, electronic training is permissible. All that is required is that all employees with access to transmission or customer information and officers and directors have the training and certify that they have participated in the training. Staff notes that the more rigorous the training, the less likely for those trained to make improper disclosures or commit other Standards of Conduct errors.

40. Is a Transmission Provider required to give Standards of Conduct training to contractors, consultants and agents that work for the Transmission Provider?

Answer: Yes. A Transmission Provider is responsible for the actions of its contractors, consultants and agents. If the contractors, consultants or agents are engaging in transmission functions or have access to transmission or customer information, the Transmission Provider must provide its contractors, consultants and agents with Standards of Conduct training, with particular emphasis on the “no-conduit rule.” However, there is no requirement that a Transmission Provider train its contractors, consultants and agents in the Standards of Conduct if they are not engaging in transmission functions or do not have access to transmission or customer information.

41. What is the Commission’s expectation on refresher Standards of Conduct training for employees? Should the frequency of refresher training differ depending on the duties of the employees?

Answer: The Standards of Conduct do not specify how often refresher training must be offered. However, staff recommends that for Transmission Provider employees, Standards of Conduct refresher training should be conducted annually for all employees

who have access to non-public information about the Transmission Provider's transmission system or non-public customer information.

Some examples of items that staff suggests are appropriate for refresher training are re-emphasizing the information sharing prohibitions and, reviewing Commission orders issued since the last training occurred that interpret the Standards of Conduct and describe the types of activities that are appropriate or inappropriate. The refresher training may also review recent Commission-issued audit reports for examples of compliance steps relating to specific companies.

F. Questions on Implementing Tariff Provisions

42. What are the Standards of Conduct requirements for Implementing Tariff Provisions?

Answer: The Standards of Conduct has five requirements for implementing tariff provisions:

1. A Transmission Provider must strictly enforce all tariff provisions relating to the sale or purchase of open access transmission service if the tariff provisions do not permit the use of discretion. 18 C.F.R. § 358.5(c)(1).
2. For all tariff provisions relating to the sale or purchase of open access transmission service that permit the use of discretion, a Transmission Provider must apply provisions in a fair, impartial and non-discriminatory manner. 18 C.F.R. § 358.5(c)(2).
3. A Transmission Provider must process all similar requests for transmission in the same manner and within the same period of time. 18 C.F.R. § 358.5(c)(3).
4. A Transmission Provider must maintain a written log, available for Commission audit, detailing the circumstances and the manner in which it exercised its discretion under any terms of its tariff. The Transmission Provider must also post the same information on the OASIS (if electric) or Internet website (if gas), within 24 hours of when the Transmission Provider exercises the discretion. 18 C.F.R. § 358.5(c)(4).
5. A Transmission Provider may not, through its tariffs or otherwise, give preference to its Marketing or Energy Affiliate over any other wholesale customer in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price, curtailments, scheduling, priority, ancillary services or balancing). 18 C.F.R. § 358.5(c)(5).

43. Why do the Standards of Conduct contain a requirement for Transmission Providers to post a log of the discretionary actions it takes under its tariff?

Answer: This requirement is designed to improve transparency in the Transmission

Provider's operations. 18 C.F.R. §358.5 (c)(4). The transparency ensures that all of a Transmission Provider's customers, affiliated and non-affiliated, are treated fairly and that the Transmission Provider does not unduly discriminate while exercising discretion under its tariff. It is critical that customers be aware of the Transmission Provider's actions in order for them to determine if they are being treated fairly and to make informed business decisions.

44. What information should be included in the discretionary posting?

Answer: The discretionary posting should include sufficient information for a non-affiliated customer or potential customer to determine if it is similarly situated and eligible for comparable treatment. The Transmission Provider must post the identity of the tariff provision and the discretion it exercised, as well as the date of the discretion, and the entity or entities that received the discretionary waiver. The posting need not reveal confidential customer information or sensitive business information if such disclosure could potentially harm the customer. For example, if a Transmission Provider is waiving a creditworthiness tariff provision, the Transmission Provider does not need to reveal the name of the customer, but should disclose in the posting some general information about the type or category of customer, *e.g.*, non-affiliated electric cooperative, affiliated generator or non-affiliated LDC.

45. How can a Transmission Provider comply with the discretionary log requirement?

Answer: The Commission has stated that a Transmission Provider does not have to post an act of discretion on its discretionary log if the action is already being posted as the result of another Commission requirement (such as operational flow orders, available capacity or curtailments). Order No. 2004-B at P 98. This eliminates duplicative postings.

It is suggested (although not required) that each Transmission Provider review its tariff and identify the tariff provisions that permit the Transmission Provider to exercise discretion. If a Transmission Provider routinely waives a tariff provision, one option for complying with the discretionary log requirement is to post a notice that the Transmission Provider regularly waives that provision, *e.g.*, accepting gas quality outside of tariff specifications. If a tariff provision lists options such as several different methods to satisfy a creditworthiness requirement, then a Transmission Provider can satisfy the posting requirements by either explicitly stating in the tariff provision how it will exercise options or by posting a notice to this effect.

G. Questions on Obtaining Waivers or Exemptions from the Standards of Conduct

46. How can a Transmission Provider obtain a full or partial waiver or exemption from the Standards of Conduct?

Answer: A Transmission Provider may request a full or partial waiver or exemption from the requirements of the Standards of Conduct by making a filing with the Commission explaining why its operations (and/or the operations of its Energy and/or Marketing Affiliates) warrant such a waiver or exemption. *See* 18 C.F.R. § 358.1(d). The filing should explain why the waiver or exemption would not result in the opportunity to provide undue preferences to the Transmission Provider's Energy and/or Marketing Affiliates. (A more detailed explanation of waiver or exemption criteria is in the next FAQ). Waiver requests should be designated with a "TS" docket prefix and filed with the Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, N.E., Washington, D.C. 20426. Requests should not be incorporated into filings or pleadings that relate to other subject matters.

47. What are the criteria the Commission uses to decide a Transmission Provider's request for full or partial waiver or exemption from the Standards of Conduct?

Answer: The basis for waivers or exemptions varies based on whether the Transmission Provider is a natural gas company or electric utility. Generally, the criteria for a full waiver or exemption of the Standards of Conduct for electric Transmission Providers are set forth in *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232 (1996).⁴ Waivers or exemptions of the Standards of Conduct may be granted, upon request, to: (1) a Transmission Provider that owns, operates or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) a small Transmission Provider that owns, operates, or controls an integrated transmission grid unless it is a part of a tight power pool, or warranted by other circumstances.

An electric Transmission Provider that is a member of an RTO or ISO may also obtain a waiver or exemption from the Standards of Conduct under Section 358.1(c) provided that the Transmission Provider does not operate or control its transmission facilities and has no access to transmission, customer or market information covered by Section 385.5(b). *See American Transmission Company, LLC*, 109 FERC ¶ 61,082 at P 34-38 (discussion pertaining to Old Dominion Electric Cooperative) (2004).

A gas Transmission Provider is exempt from the Standards of Conduct if it is a storage provider with market based rate authority, which is not interconnected to the jurisdictional facilities of any affiliated interstate pipeline, has no exclusive franchise area, no captive rate payers and no market power. *See* Section 358.3(a)(3). A gas Transmission Provider also may request a waiver or exemption based on its small size,

⁴ Although this order was issued relating to the prior Standards of Conduct for electric Transmission Providers under Order No. 889, Order No. 2004 and subsequent Commission precedent have not altered these criteria.

number of employees and facilities, the level of interest in transportation on the pipeline, and, where appropriate, and the degree of independent functioning. *See, e.g., Bear Creek Storage Company et al.*, 108 FERC ¶ 61,011 (2004); *Ringwood Gathering Company*, 55 FERC ¶ 61,300 (1991).

48. If the Commission granted a Transmission Provider a partial or full waiver or exemption from the Standards of Conduct, what changes in circumstances will trigger the need to make a filing with the Commission to maintain that waiver or exemption?

Answer: The Commission needs to remain informed of material changes in circumstances so that it can ensure that waivers and exemptions continue to be valid. If the basis for the full or partial waiver or exemption changes, the Transmission Provider must make a filing with the Commission that explains the changes in circumstances. Examples of material changes are changes in the basic configuration of the Transmission Provider and/or its Marketing and/or Energy Affiliates such as size, number of employees, whether there is excess capacity or a merger with other entities. The abandonment of a natural gas facility that does not materially change size/load factors or employees would not trigger a revised waiver or exemption request, but it might trigger a posting requirement if it was a shared facility or if the abandonment resulted in the transfer of employees.

H. Questions regarding posting requirements

49. What are the posting requirements under the Standards of Conduct?

Answer: A Transmission Provider must post all of the following on its OASIS (if it is an electric Transmission Provider) or on its Internet website (if it is a gas Transmission Provider):

1. Each instance of emergency circumstances affecting system reliability that resulted in any deviation from the Standards of Conduct, within 24 hours of such deviation. 18 C.F.R. § 358.4(a)(2).
2. The names and addresses of its Marketing and Energy Affiliates and any changes within seven business days of the change. 8 C.F.R. §§ 358.4(b)(1) and 358.4(b)(3)(iv)
3. A complete list of facilities shared by the Transmission Provider and its Marketing and Energy Affiliates, including the types of facilities shared and their addresses and any changes within seven business days of the change. 18 C.F.R. §§ 358.4(b)(2) and 358.4(b)(3)(iv).
4. Comprehensive organizational charts and any changes within seven business days of the change. 18 C.F.R. § 358.4(b)(3). (see next FAQ for more details on this).

5. Information concerning potential merger partners as affiliates within seven days after the potential merger is announced. 18 C.F.R. § 358.4(b)(3)(v).
6. Notices of any employee transfers between the Transmission Provider and the Marketing or Energy Affiliate including: the name of the transferring employee, the respective titles held while performing each function (*i.e.*, on behalf of the Transmission Provider, Marketing or Energy Affiliate), and the effective date of the transfer. 18 C.F.R. § 358.4(c).
7. Current written procedures implementing the Standards of Conduct in such detail to enable customers and the Commission to determine that the Transmission Provider is in compliance with the Standards of Conduct requirements (the procedures must be posted within 30 days of a Transmission Provider becoming subject to the Standards of Conduct requirements). 18 C.F.R. § 358.4(e)(3).
8. Improper disclosures of transmission information or customer information to an Energy or Marketing Affiliate—must be posted **immediately** after the improper disclosure. 18 C.F.R. § 358.5(b)(3). *See* FAQ No. 25.
9. If a non-affiliated customer authorizes the Transmission Provider to share its information with a Marketing or Energy Affiliate, the Transmission Provider must post notice of that consent along with a statement that the Transmission Provider did not provide any preferences, either operational or rate-related, in exchange for that voluntary consent. 18 C.F.R. § 358.5(b)(4).
10. The log detailing the circumstances and manner in which the Transmission Provider exercised its discretion under any terms of its tariff, updated within 24 hours of when a Transmission Provider exercises such discretion. 18 C.F.R. § 358.5(c)(4). *See* FAQ Nos. 43-45, *supra*).
11. Any offer of a discount for any transmission service made by the Transmission Provider contemporaneous with the time that the offer is contractually binding, including: the name of the customer involved in the discount and whether it is an affiliate or whether an affiliate is involved in the transaction, the rate offered; the maximum rate; the time period for which the discount would apply; the quantity of power or gas upon which the discount is based; the delivery points under the transaction; and any conditions or requirements applicable to the discount. 18 C.F.R. § 358.5(d).

50. What is required for organizational chart postings?

Answer: The Standards of Conduct require that the Transmission Provider post

organizational structure of the parent corporation with the relative position in the corporate structure of the Transmission Provider, Marketing and Energy Affiliates. 18 C.F.R. § 358.4(b)(3)(i). The organizational charts should provide a pictorial representation of the structure of the entire company with the chain of command clearly depicted. Lists with indentations of company names are not sufficient.

The Standards of Conduct require the Transmission Provider to post the business units, job titles and descriptions, and chain of command for all positions, including officers and directors, with the exception of clerical, maintenance, and field positions. The job titles and descriptions must include the employee's title, the employee's duties, whether the employee is involved in transmission or sales, and the name of the supervisory employees who manage non-clerical employees involved in transmission or sales. 18 C.F.R. § 358.4(b)(3)(ii).

The Standards of Conduct require the posting of all employees who are engaged in transmission functions for the Transmission Provider and marketing or sales functions or who are engaged in transmission functions for the Transmission Provider and are employed by any of the Energy Affiliates. The Transmission Provider must post the name of the business unit within the marketing or sales unit or the Energy Affiliate, the organizational structure in which the employee is located, the employee's name, job title and job description in the marketing or sales unit or Energy Affiliate, and the employee's position within the chain of command of the Marketing or Energy Affiliate. 18 C.F.R. § 358.4(b)(3)(iii).

51. Does a Transmission Provider have to post the names and job descriptions for employees involved in retail functions?

Answer: The Transmission Provider must disclose the actual job functions of employees who are responsible for bundled retail merchant functions so that the Commission may determine whether such employees are properly categorized as not having wholesale merchant functions or transmission system operations and reliability functions. *See American Electric Power Service Corp., et. al.* 81 FERC ¶ 61,332 (1997).

52. If a Transmission Provider discovers that it failed to update its OASIS or Internet Website in a timely fashion, how should it remedy that failure?

Answer: As soon as the Transmission Provider discovers that it failed to update its OASIS (if electric) or Internet website (gas), it should post the correct information. At the same time, the Transmission Provider should post a clear notice on its OASIS or website that it had mistakenly failed to update the information. The notice should state the date on which the information should have been updated and the date that it was updated.

53. Does the Commission prefer a specific template for the posting of Order No.

2004 compliance documents?

Answer: No, except for the posted information required under Order No. 2004 that has previously been standardized by the North American Energy Standards Board and the Commission-approved OASIS Standards and Protocols.

<http://www.gisb.org/materials/bscr.asp>

54. Order No. 2004 does not always identify the minimum length of time that postings are required to remain on a Transmission Provider's website or OASIS before being archived (e.g., deviations because of emergency circumstances affecting system reliability, inappropriate disclosures of information to an Energy Affiliate). In such instances, what is the appropriate period to keep the information posted?

Answer: The majority of the Commission's OASIS and Internet posting requirements specify that items be posted for a minimum of 90 days before being archived for a minimum of three years. 18 C.F.R. §377(b) and 18 C.F.R. § 284.12(b)(3)(v). Where Order No. 2004 does not specify how long the information should remain posted, Transmission Providers should follow the general guidelines for other posting requirements and post the information for a minimum of 90 days and then archive the information for a minimum of three years. However, please review the next two FAQs regarding certain specific situations.

55. How long must a posting of a one-time only tariff waiver under section 358.5(c)(4)) remain on the OASIS or Internet web site after the event has occurred?

Answer: The answer depends on the nature of the waiver and how long it is in effect. The posting should remain on the OASIS or Internet website for at least 90 days after the waiver expires and is no longer in effect. See 18 C.F.R. § 358.5(c)(4). For example, if the waiver is for the life of a contract, then the waiver must remain posted until 90 days after the contract expires. As with all postings, after the Transmission Provider removes the waiver posting, the information should be archived for three years.

56. What time period must pass before historical daily operations data, such as daily scheduled volume data, are no longer considered to be commercially sensitive data for purposes of the Order No. 2004 posting requirements for inappropriate disclosures to Energy Affiliates and voluntary consents from customers to share information?

Answer: The Standards of Conduct do not make a distinction between historical transmission information and current transmission information. The rules do not provide for information to be permissibly shared simply because of age. See FAQ No. 33. If the transmission information is useful to a Marketing and/or Energy Affiliate, it would likely also be useful to the Marketing and/or Energy Affiliate's competitors. Preferentially

providing such information to a Marketing and/or Energy Affiliate would convey an undue preference to that Marketing and/or Energy Affiliate.

57. May an electric Transmission Provider include a link on its OASIS site that will take users to an external site (e.g., the Transmission Provider's website) where Standards of Conduct related information is stored (e.g., Energy Affiliate names, acts of discretion), or does all OASIS information have to remain on the OASIS domain?

Answer: It is permissible for a Transmission Provider to have a hyperlink to take users to an external site. Many RTOs and ISOs provide hyperlinks for their member Transmission Providers. However, if a Transmission Provider chooses to do this, it must ensure that the hyperlinks are kept up to date in order to remain in compliance.

58. If certain postings (such as discount postings) are linked from the OASIS to the Transmission Provider's web site, are they still subject to the OASIS archiving requirements in 18 C.F.R. § 37.7?

Answer: Yes, because the archive posting requirements are the same – *i.e.*, three years.

59. Regarding OASIS postings, is it permissible to post certain documents, for example employee names and shared facilities, in a secure way by requiring a digital security certificate to view those documents?

Answer: Digital or electronic certificates are common in the electric industry and some information posted on OASIS may only be accessed using a certificate. The OASIS Standards and Protocols approved by the Commission provide the requirements for placing certain information on the OASIS. For information not covered by the requirements of the OASIS Standards and Protocols, *see* http://www.gisb.org/WEQ/weq_Final.asp)

Where the OASIS Standards and Protocols are silent, staff recommends that the information be easily accessible and transparent. With respect to the posting of employee names, the Commission has not received reports of any security problems since the Standards of Conduct began requiring the posting of that information in 1996. Moreover, much of that information is already public and available in either a company directory or public phone book. Similarly, with respect to posting the addresses of shared facilities, many addresses are already publicly available.

60. Regarding the posting obligations associated with shared employees, is a Transmission Provider acting reasonably in assuming that shared employees below the supervisor level (supervisory employees are typically designated as Vice President, Director, Manager, or Supervisor) need only be identified by business

unit and title, if the shared employees are not responsible for day-to-day decisions and do not have managerial responsibility for the Transmission Provider?

Answer: For employees that are permissibly shared, it is acceptable to post the name of the business unit along with job titles and job descriptions. The employees may be categorized by job type or function with the number of employees that perform each function, *e.g.*, right-of-way staff (3), billing agent (6). However, these employee groups must clearly be identified as shared employees and they shall not participate in Transmission Functions or Energy Affiliate type activities.

NOTE: Transmission Providers that have received a Commission-approved partial waiver of the Standards of Conduct that allows for the sharing of employees still have the obligation to post the business unit, job title and job description for the permissibly shared employees. 18 C.F.R. § 358.4(b)(3)(iii).

61. Is a Transmission Provider required to post on its organizational charts or elsewhere on its website the names of all contractors, consultants or agents, etc. that work for the Transmission Provider?

Answer: No. A Transmission Provider does not need to post the names of its contractors, consultants, or agents unless the personnel are engaging in transmission functions. A Transmission Provider may accomplish this requirement by posting an explanation or a hyperlink to the website of the contractor, consultant or agent.

62. May a Transmission Provider have two different Standards of Conduct implementation procedures, one general procedure posted on its OASIS or Internet website and a second, more detailed procedure not posted on its OASIS or Internet website?

Answer: Yes. Many Transmission Providers have posted general Standards of Conduct implementation procedures with sufficient detail to enable customers and the Commission to determine that the Transmission Provider is in compliance with the Standards of Conduct. However, a number of other Transmission Providers have also adopted very detailed internal procedures that outline internal steps and processes that supplement the posted information. These procedures often identify specific individuals responsible for particular activities as well as the numerous internal steps required to comply with those requirements, for example, all the steps and approvals necessary for something to get posted on the OASIS or Internet website. The Transmission Provider is not required to post these very detailed procedures, but may be asked to submit them to the Commission during an audit or investigation.